

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALEX NORRIS,	:	
Petitioner,	:	
v.	:	Case No. 3:18-cv-105
JEFF NOBLE, Warden, Madison	:	JUDGE WALTER H. RICE
Correctional Institution,	:	
Respondent.	:	

DECISION AND ENTRY REJECTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #10); SUSTAINING PETITIONER'S OBJECTIONS (DOC. #8) TO MAGISTRATE JUDGE'S NOTATION ORDER (DOC. #7) STRIKING PETITIONER'S MOTION FOR AN EXTENSION OF TIME TO FILE OBJECTIONS (DOC. #6); VACATING ORDER DISMISSING PETITION WITH PREJUDICE (DOC. #5); OBJECTIONS TO APRIL 5, 2018, REPORT AND RECOMMENDATIONS (DOC. #4) TO BE FILED WITHIN 30 DAYS OF THE DATE OF THIS DECISION AND ENTRY; CASE RE-OPENED

On April 4, 2018, Petitioner, Alex Norris, filed a Petition for Writ of Habeas Corpus, Doc. #3. The following day, United States Magistrate Judge Michael R. Merz issued a Report and Recommendations, Doc. #4, recommending that the Petition be dismissed with prejudice, on the merits. On April 30, 2018, the undersigned issued an Order Adopting Report and Recommendations, Doc. #5, noting that no Objections had been filed within the time allotted.¹ Just hours later,

¹ Although the case was dismissed, no Judgment has yet been entered.

on that same date, Petitioner filed a motion, dated April 26, 2018, for an extension of time to file Objections to the Report and Recommendations, Doc. #6. By Notation Order, Magistrate Judge Merz denied that motion as moot, given that the Court had already dismissed the case; however, he gave Petitioner until May 5, 2018, to file a motion to amend the judgment.

Petitioner then filed an Objection to that Notation Order, Doc. #8, asking for additional time. The undersigned recommitted the matter to Magistrate Judge Merz, Doc. #9, who issued another Report and Recommendations, Doc. #10, on May 15, 2018, recommending that Petitioner's Objection be overruled because the Ohio Revised Code section cited by Petitioner in support of his request for additional time was inapplicable. Petitioner has not filed any Objections to the May 15, 2018, Report and Recommendations.

Nevertheless, the Court, in its discretion, REJECTS the Report and Recommendations, Doc. #10, and SUSTAINS Petitioner's Objection, Doc. #8, to the April 30, 2018, Notation Order denying Petitioner's motion for an extension of time to file Objections to the April 5, 2018, Report and Recommendations, Doc. #6. The Court notes that Petitioner's motion for an extension of time was mailed on April 26, 2018, and was docketed on April 30, 2018, just hours after the Petition was dismissed.

Objections to the Report and Recommendations were due by April 22, 2018. Accordingly, Petitioner's motion for an extension of time was technically a few days late. Nevertheless, it is deemed to have been filed on April 26, 2018, four

days before the Court dismissed the case.² Under these circumstances, the Court finds it preferable to give Petitioner the opportunity to respond, on the merits, to the April 5, 2018, Report and Recommendations. Accordingly, the Court VACATES the Order Adopting Report and Recommendations, Doc. #5. Petitioner shall have 30 days from the date of this Decision and Entry to file any substantive Objections to the April 5, 2018, Report and Recommendations.

The captioned cause is to be re-opened on the Court's docket.

Date: June 15, 2018



WALTER H. RICE
UNITED STATES DISTRICT JUDGE

² Under the "mailbox rule," Petitioner's motion is considered to be filed on the date that it was given to prison officials for filing in the federal court. *Houston v. Lack*, 487 U.S. 266, 273 (1988). However, it was not docketed by the Clerk of Court until four days later.